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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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In the Matter of

Amendments to Modernize and Clarify
Part 17 of the Commission's Rules Concerning
Construction, Marking and Lighting of
Antenna Structures

)
)
) WT Docket No.
) RM-
)
)

Federal Communications Commission
Office of Secretary

To: The Commission

PETITION FOR RULEMAKING

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SUMMARY

Since the last substantive revision of Part 17 in 1995, lighting and monitoring technologies have developed rapidly and altered the tools available to antenna structure owners and the Commission to ensure safety to air navigation. Based on these technological advances, as well as the experiences of PCIA and its members with the current rules and changes in FAA requirements, PCIA urges the Commission to promptly commence a proceeding to reexamine its Part 17 rules.

Foremost, PCIA recommends that entities using modern NOC-based remote monitoring technologies to automatically monitor tower lighting equipment in a near real-time, continuous fashion be exempted from the requirement in Section 17.47(b) to conduct quarterly physical inspections of such equipment. These modern technologies are a safer and far more effective means of ensuring that these systems are functioning properly than manual on-site inspections every three months. Revising the rule will encourage antenna structure owners who have not yet employed such beneficial technologies to do so.

PCIA also recommends, now that the information contained in the Form 854R is available online via the FCC's ASR Online Systems, that the current requirement in Sections 17.4(e)-(f) and 17.6(c) for antenna structure owners to provide tenants with a paper copy of the Form 854R be eliminated. In light of these technological upgrades to the Commission's online databases and ready availability of ASR data, the requirement to provide a paper copy of the Form 854R no longer serves any practical purpose and imposes unnecessary costs.

The Commission should take this opportunity to clarify Section 17.4(g) concerning where to post the ASR Number. Consistent with the FCC's online Posting Guidelines, the rule should be revised to make clear that posting the ASR Number at the compound fence or gate will satisfy the posting requirement.

Finally, the FCC should harmonize a number of its Part 17 rules to bring them into alignment with FAA standards. Specifically, the FCC should amend Section 17.23 to reflect the current FAA Advisory Circular governing obstruction marking and lighting. The FCC should also amend Section 17.57 to require notification of construction or dismantlement consistent with FAA-prescribed timelines.

Updating the rules as proposed herein will further the public interest by taking advantage of technological advances, clarifying the obligations of antenna structure owners and licensees, and harmonizing government requirements. Accordingly, consistent with the recommendation of the Wireless Telecommunications Bureau in the 2004 Biennial Review Proceeding, the FCC should promptly institute a proceeding to reexamine the Part 17 rules.

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To: The Commission

PETITION FOR RULEMAKING

PCIA – The Wireless Infrastructure Association (“PCIA”), pursuant to Section 1.401 of the Commission’s rules, 47 C.F.R. § 1.401, respectfully submits this petition for rulemaking to modernize and clarify the Federal Communications Commission’s (“FCC” or “Commission”) Part 17 rules governing the construction and maintenance of antenna structures. Updating the rules will advance the public interest by taking advantage of technological advances, clarifying the obligations of antenna structure owners and licensees, and harmonizing government requirements.

INTRODUCTION AND BACKGROUND

PCIA is the trade association representing the wireless telecommunications infrastructure industry. PCIA’s members own and manage more than 50,000 telecommunications towers and antenna facilities that support wireless services across the country. As the representative of wireless infrastructure providers, PCIA seeks to facilitate the deployment of widespread dependable communications networks across the country, consistent with the mandate of the Telecommunications Act of 1996.¹ The proposed Part 17 enhancements will further this mission

¹ Pub. L. No. 104-104, § 706(a), 110 Stat. 56, 153 (directing the Commission to “encourage the deployment on a reasonable and timely basis of advanced telecommunications capability to all
(footnote continued)

by facilitating infrastructure investment and deployment while improving safety to air navigation.²

The last substantive revision of Part 17 occurred in 1995, with limited clarifications in 2000.³ Since that time, lighting and monitoring technologies have developed rapidly and altered the tools available to antenna structure owners and the Commission to ensure safety to air navigation. These changes, combined with the experiences of PCIA and its members with the current rules and changes in Federal Aviation Administration (“FAA”) requirements, prompted PCIA to submit comments in the 2004 Biennial Regulatory Review proceeding urging the Commission to reexamine its Part 17 rules.⁴ In particular, PCIA explained that automatic remote monitoring technologies that provide near real-time, continuous monitoring of tower lighting systems by network operations control (“NOC”) centers have enhanced air safety and rendered obsolete the requirement to conduct quarterly inspections of these systems. PCIA thus urged the FCC to eliminate needless physical inspections for owners that have implemented these modern monitoring technologies. PCIA also recommended amendments to Part 17 to reflect upgrades to the FCC’s online Antenna Structure Registration (“ASR”) systems, which have made the

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Americans . . . by utilizing, in a manner consistent with the public interest, convenience, and necessity . . . regulating methods that remove barriers to infrastructure investment”) (reproduced in the notes under 47 U.S.C. § 157).

² See 47 C.F.R. § 1.401(c).

³ See *Streamlining the Commission’s Antenna Structure Clearance Procedure and Revision of Part 17 of the Commission’s Rules Concerning Construction, Marking and Lighting Antenna Structures, Report and Order*, 11 FCC Rcd 4272 (1995) (“*Part 17 R&O*”), recon., 15 FCC Rcd 8676 (2000).

⁴ Comments of PCIA – The Wireless Infrastructure Association, WT Docket No. 04-180 (July 12, 2004).

continuing provision of paper Form 854Rs to tenants unnecessary, and to harmonize Part 17 rules with updated FAA circulars and construction notification requirements.

PCIA's comments were unopposed. Both CTIA and Cingular filed reply comments in support of PCIA's recommended changes.⁵ On January 5, 2005, the Wireless Telecommunications Bureau ("Bureau" or "WTB") released its Staff Report providing recommendations on various rules affecting wireless telecommunications carriers, including Part 17. Staff "conclude[d] that certain modifications may be in the public interest" and "recommend[ed] that the Commission *initiate a proceeding in part to consider the specific recommendations of PCIA* and others with respect to Part 17."⁶ The purpose of such a proceeding would be to "examine the Part 17 rules to modify or eliminate, without compromising public safety goals, any rules which create unnecessary administrative burdens or are apt to confuse owners and licensees who attempt to comply with our Part 17 rules."⁷

On October 27, 2005, PCIA submitted specific suggested redlined rule revisions for the Commission's review and incorporation into the Part 17 notice of proposed rulemaking recommended by Bureau staff.⁸ PCIA elaborated on its prior suggestions, and proposed further

⁵ See Reply Comments of CTIA – The Wireless Association™ ("CTIA"), WT Docket No. 04-180, at 2 (Aug. 11, 2004) ("CTIA supports PCIA's recommendations and urge[s] the Commission to amend its rules in accordance with PCIA's recommendations."); Reply Comments of Cingular Wireless LLC ("Cingular"), WT Docket No. 04-180, at 8 (Aug. 11, 2004) ("Cingular Reply") ("The Commission promptly should initiate a rulemaking proceeding to consider PCIA's proposals.").

⁶ 2004 Biennial Regulatory Review, *Wireless Telecommunications Bureau Staff Report*, 20 FCC Rcd 124, 160 (WTB 2005) (emphasis added) ("2004 WTB Staff Report"); see also *id.* at 137.

⁷ *Id.* at 160.

⁸ See Letter to John Borkowski, Assistant Division Chief for Spectrum Access, Wireless Telecommunications Bureau, FCC, and George Dillon, Assistant Bureau Chief, Enforcement Bureau, FCC, from Jeremy Denton, Director, Industry Affairs, PCIA (Oct. 27, 2005).

rule changes to clarify the posted location of the Antenna Structure Registration (“ASR”) Number. Consistent with this record and the staff’s recommendation, PCIA respectfully requests that the FCC initiate a Part 17 rulemaking.

DISCUSSION

The FCC has broad discretion to streamline or otherwise modify its rules “if they no longer serve the public interest in their current form.”⁹ The public interest is enhanced by modernizing the current rules to take advantage of technological advances,¹⁰ clarifying the existing rules to better facilitate compliance and consistent enforcement,¹¹ and harmonizing requirements across government agencies.¹² Accordingly, consistent with Section 1.401 of the Commission’s rules, the following sets forth all “facts, views, arguments and data deemed to

⁹ See, e.g., *Amendments to Streamline and Harmonize Various Rules Affecting Wireless Radio Services, Report and Order and Further Notice of Proposed Rulemaking*, 20 FCC Rcd 13900, 13903 (2005) (“*Wireless Harmonization Order*”); *2002 Biennial Regulatory Review, Report*, 18 FCC Rcd 4726, 4737 (2003) (“We, of course, acknowledge the Commission’s broad authority, apart from Section 11, to consider proposed modifications to or elimination of its rules under the public interest standard.”).

¹⁰ See *2004 WTB Staff Report*, 20 FCC Rcd at 160 (recommending the modification or elimination of “any rules which create unnecessary administrative burdens” so long as public safety goals are not compromised); *Wireless Harmonization Order*, 20 FCC Rcd at 13903 (indicating that “technological changes” make it “appropriate to review whether . . . rules are obsolete and no longer in the public interest”).

¹¹ See *2004 WTB Staff Report*, 20 FCC Rcd at 160 (recommending the initiation of a proceeding under the Commission’s broad discretion to act in the public interest to reexamine rules which “are apt to confuse owners and licensees”).

¹² See *Wireless Harmonization Order*, 20 FCC Rcd at 13903 (citing *Notice* seeking comment “on streamlining and harmonizing . . . rules if they no longer serve the public interest in their current form”).

support the action requested.”¹³ For the Commission’s convenience, the specific text of each of the proposed rule revisions is also attached hereto as Appendix A.¹⁴

**I. THE COMMISSION SHOULD MODERNIZE AND IMPROVE
PART 17 RULES TO REFLECT TECHNOLOGICAL ADVANCES**

PCIA urges the Commission to modernize and enhance its Part 17 rules, as described below, to take advantage of recent technological advances that enhance safety to air navigation or render certain requirements obsolete. Foremost, PCIA recommends that entities using modern NOC-based remote monitoring technologies to automatically monitor tower lighting equipment in a near real-time, continuous fashion be exempted from the requirement in Section 17.47(b) to conduct quarterly physical inspections of such equipment. These modern technologies are a safer and far more effective means of ensuring that these systems are functioning properly than manual on-site inspections every three months. Revising the rule as suggested will encourage antenna structure owners who have not yet employed such beneficial technologies to do so. PCIA also recommends, now that the information contained in the Form 854R is available online via the FCC’s ASR Online Systems, that the current requirement in Sections 17.4(e)-(f) and 17.6(c) for antenna structure owners to provide tenants with a paper copy of the Form 854R be eliminated.

**A. Modern NOC-Based Remote Monitoring Technologies
Create a New Opportunity for Improved Public Safety
Under 17.47(b)**

PCIA respectfully requests that the Commission revise Section 17.47 of its rules governing the inspection of tower lighting systems to take account of the benefits of modern

¹³ 47 C.F.R. § 1.401(c).

¹⁴ *Id.*

NOC-based remote monitoring technologies. As described below, these new technologies provide significant enhancements to public safety over inspection techniques available at the time the rule was first adopted. Changing the rule as requested will not only enhance public safety, it will also remove unnecessary burdens and incent others who have not implemented these beneficial technologies to do so.

By way of background, Section 17.47(a) of the Commission's rules requires antenna structure owners to ensure that lights are functioning properly, either by making daily observations of the lights or properly maintaining an automatic alarm system designed to detect any light failure and provide the owner with notification of the failure.¹⁵ Section 17.47(b) requires owners to "inspect at intervals not to exceed 3 months all automatic or mechanical control devices, indicators, and alarm systems associated with the antenna structure lighting to insure that such apparatus is functioning properly."¹⁶ Plainly, the purpose of subsection (b) is to ensure the proper functioning of systems designed to monitor tower lighting and alert the owner of malfunctions.

These inspection protocols, including the quarterly inspection requirement, had their genesis in the early 1940s¹⁷ and have not substantively changed since the Commission

¹⁵ See 47 C.F.R. § 17.47(a) (providing that the owner of any antenna structure registered with the Commission and assigned lighting specifications shall (i) "make an observation of the antenna structure's lights at least once each 24 hours either visually or by observing an automatic properly maintained indicator designed to register any failure of such lights" or (ii) "provide and properly maintain an automatic alarm system designed to detect any failure of such lights and to provide indication of such failure to the owner").

¹⁶ 47 C.F.R. § 17.47(b).

¹⁷ See 47 C.F.R. § 2.82 (1943) (requiring visual observations of tower lights at least once a day and inspection of all beacons and automatic lighting control devices at least once every three months); 47 C.F.R. § 17.149 (1946) (tracking the 1943 regulation but, for licensees of stations in

(footnote continued)

reorganized its rules in 1953.¹⁸ In the 1960s, when the Commission last considered changing the quarterly inspections requirement,¹⁹ most automatic monitoring systems suffered from certain communications problems between the monitoring system and the tower lighting.²⁰ The nature of these systems meant that periodic on-site visits were necessary to confirm that automatic control devices and alarm systems were functioning properly, although it could take up to three months (the time between quarterly visits) for owners using these older systems to learn of a malfunctioning device.²¹

While the rules governing the inspection of tower lighting and monitoring systems have gone largely unchanged since their adoption, the equipment used to monitor tower lighting has seen significant advancements. Within the last decade, modern monitoring technologies have been developed, tested and implemented that now allow lighting systems, control devices, indicators, and alarm systems to be automatically monitored in a near real-time, continuous fashion by NOC centers. These NOC-based technologies incorporate continuously-available

(footnote continued)

the utility radio service, permitting daily observation of lighting either visually or by observing an automatic indicator).

¹⁸ See 18 Fed. Reg. 1356 (1953); 47 C.F.R. § 17.37 (1954).

¹⁹ See *Revision of Part 17 of the Commission's Rules Concerning Construction, Marking and Lighting of Antenna Structures, Report and Order*, 10 Rad. Reg. 2d 1761, 1766 (1967) (declining to alter the inspection interval due to an insufficient showing).

²⁰ These older monitoring technologies, used far less frequently today, include a fuse-based meter design, the dry-contact system and the so-called “FBI” and “ADEMCO” systems. These early technologies are described in greater detail in the Request for Waiver of 47 C.F.R. § 17.47 filed by American Tower Corporation (“ATC”) in 2005, discussed below. See ATC, Request for Waiver of 47 C.F.R. § 17.47, WT Docket No. 05-326, at 4-5 (filed May 19, 2005) (“ATC Request”).

²¹ See *id.*

communications between the tower site monitoring systems and the NOC, providing the functional equivalent of a continual inspection of control devices, indicators and alarm systems from one central location. Significantly, users of such systems are alerted to actual and potential problems immediately in many cases and, at most, within twenty-four hours. This is a significant improvement and enhancement to public safety in comparison to the technologies in use when the quarterly inspection requirement was first imposed.

One such NOC-based remote monitoring technology with which the Commission is already familiar is the Eagle Monitoring System in use by American Tower Corporation (“ATC”).²² Other similar technologies are also known to the Commission, such as Global Signal Inc.’s (“GSI”) HARK Monitoring System,²³ but all share a number of common characteristics which obviate the need for quarterly physical inspections for all such functionally equivalent systems. These characteristics include:

- Continuous monitoring of lighting via on-site devices with backup. On-site control devices located at the tower continuously monitor the lighting systems for problems and transmit details immediately to the centralized

²² As acknowledged throughout this Petition, ATC has a pending request for a waiver of Section 17.47(b) seeking permission to conduct annual inspections for its towers employing the Eagle monitoring system. ATC Request, *supra*; see also ATC, Response, WT Docket No. 05-326 (Nov. 14, 2005); ATC, Reply Comments, WT Docket No. 05-326 (Mar. 15, 2006) (“ATC Reply”). PCIA filed comments supporting ATC’s waiver request and PCIA continues to believe that grant of ATC’s waiver request is in the public interest. See PCIA, Comments, WT Docket No. 05-326 (Feb. 23, 2005) (“PCIA Comments”); see also Flash Technology, Comments, WT Docket No. 05-326 (Feb. 23, 2006); GSI, Comments and Request for Further Waiver, WT Docket No. 05-236 (Feb. 23, 2006) (“GSI Comments/Request”); Hark Tower Systems, Inc., Comments, WT Docket No. 05-326 (Feb. 23, 2006) (“Hark Comments”). PCIA urges the Commission to act on ATC’s waiver request expeditiously, and separately from a proceeding on the instant petition. Grant of ATC’s waiver request – which is ripe for decision – will provide the Commission with valuable empirical evidence about the reliability of NOC-based technologies while the Commission considers a more permanent, industry-wide revision to the quarterly inspection rule.

²³ See GSI Comments/Request, *supra*.

NOC. The monitoring devices are highly reliable²⁴ and are supported by backup batteries.

- Constantly available communications between tower and NOC. The monitoring systems at the tower are connected via a link (landline, cellular, PCS microwave or satellite) to the NOC. This allows the tower to communicate problems to the NOC, and the NOC to investigate and respond to problems. This constant path is also the means to supervise the tower site's monitoring equipment. The continuity of communications is confirmed daily.
- Daily polling of monitoring equipment and lighting diagnoses. Daily communications check the monitoring equipment at each tower site and run a full diagnosis of the lighting system.
- Around the clock monitoring with backup and redundancy. The NOC is staffed with qualified technicians 24 hours a day, 365 days a year. If the monitoring system issues an alert, full diagnostics are conducted. Back-up NOC facilities exist in case of catastrophe, and all NOC facilities are equipped with emergency generators and battery backup.

As a result, antenna structure owners utilizing NOC centers that employ such remote monitoring technologies are able to detect problems with malfunctioning control devices, indicators and alarm systems *on a daily basis*, either through an instantaneous alert from the tower monitoring system itself or by the failure of the daily communications links to establish contact between a particular monitoring system and the NOC. Because most modern NOC-based remote monitoring technologies share these characteristics, the Commission should commence a proceeding to provide broad-based relief from the quarterly inspection

²⁴ For example, ATC reported that between March 2002, when the Eagle system was stabilized, and May 2005 when it filed its waiver request, it conducted 43,761 quarterly inspections without the discovery of any NOTAM-worthy events. An additional 17,477 inspections were conducted between May 2005 and the filing of reply comments in March 2006, again without the discovery of any NOTAM-worthy events. *See* ATC Reply at 2. GSI reported similar results for its HARK monitoring system: between October 2001 and February 2006, GSI conducted 24,153 on-site inspections, during which not a single NOTAM-worthy event was discovered. *See* GSI Comments/Request at 2.

requirement²⁵ for all NOC-based remote monitoring technologies that share these characteristics in a technology-neutral manner that does not favor one brand of monitoring equipment over another.²⁶ Specific language to reflect this proposed change in Section 17.47(b) is contained in Appendix A.

Relief is warranted because the quarterly inspections add nothing to the reliability of NOC-based remote monitoring systems but impose significant costs on antenna structure owners – costs which pull money away from infrastructure investment and deployment – with no corresponding benefit. These costs can be significant, particularly because many tower sites are located in remote areas that can be difficult to reach. For example, four of PCIA’s members have reported that they collectively spend more than \$11 million per year to conduct some 60,000 site visits (approximately 15,000 sites, visited 4 times a year) for systems already monitored by NOC-based monitoring equipment. This represents only a subset of towers owned, monitored and inspected by PCIA’s member companies.

²⁵ See, e.g., Hark Comments at 1, 2, 4 (urging the Commission “take a comprehensive approach” and “eliminate the quarterly inspection requirement . . . for all tower owners operating a tower site monitoring system and an NOC center” which “provides the functional equivalent of continual inspection through intelligent alarm monitoring systems”); ATC Request at 2 n.3 (supporting total elimination of quarterly inspections “where Eagle System technology or its functional equivalent is employed”); PCIA Comments at 2 (supporting the elimination of inspections “for all similarly situated tower companies operating a centralized [NOC] center that provides th[e] functional equivalent of continual inspection”); Cingular Reply at 7 (“[T]he Commission should grant PCIA’s suggestion that tower owners employing such modern detection systems be relieved of the manual inspection requirement.”)

²⁶ See, e.g., *Wireless Harmonization Order*, 20 FCC Rcd at 13926 (“The Commission seeks to promulgate rules that are ‘technology neutral’ because we believe that ideally it is in the public interest for competing telecommunications technologies to succeed or fail in the marketplace on the basis of their merits and other market factors, and not primarily because of government regulation. It should also be understood that ‘technology neutral’ means that our rule should neither penalize nor give advantage to any particular technology unnecessarily.”).

By revising Section 17.47(b) as requested, the Commission also will advance the public interest by encouraging those who have not yet employed state-of-the-art monitoring technologies that provide tangible public safety benefits to do so. The public unquestionably benefits from a system whereby a tower's lighting system is continually monitored, and the monitoring equipment itself is checked at a minimum on a daily basis rather than four times a year. Moreover, the FCC will still have all available enforcement tools at its disposal for tower owners that fail to make daily observations of the lights or properly maintain an automatic alarm system to detect any failure of such lights and provide notification of such failure to the owner, contrary to Section 17.47(a).

**B. The Public Availability of Form 854R Information
Online Renders Owner-Provided Paper Copies of Form
854R No Longer Necessary**

When the Commission revised its Part 17 rules in 1995, it added the requirement that antenna structure owners “provide a copy of the Antenna Structure Registration (FCC Form 854R)” to “each tenant licensee and permittee.”²⁷ The requirement appears to have been designed to serve two regulatory purposes.²⁸ First, certain applications proposing new operations or modifications to existing operations on antenna structures must contain the ASR Number located on the Form 854R if registration is required, or face dismissal.²⁹ Second, tenant licensees

²⁷ 47 C.F.R. §§ 17.4(e)-(f); *see also* § 17.6(c).

²⁸ From a liability standpoint, the Form 854R also provides confirmation of registration for entities seeking to purchase a tower or collocate thereon.

²⁹ *See, e.g., Public Notice*, “Wireless Telecommunications Bureau Revises and Begins Phased Implementation of its Unified Policy for Reviewing License Applications and Pleadings,” 14 FCC Rcd 11182, 11189 (WTB 1999) (“Structure owners are required to provide a copy of the Registration (FCC Form 854R which includes the Registration Number) to all tenant licensees in cases where registration is required. Accordingly, *tenant licensees should obtain a copy of the*”
(footnote continued)

and permittees need to be aware of “the prescribed painting and/or lighting” contained on the Form 854R in order to maintain the painting or lighting upon FCC request if the owner is unable to do so.³⁰

Over a decade ago, the obligation for owners to provide tenant licensees and permittees with a paper copy of the Form 854R made sense, as ASR records were not otherwise readily available. This changed in 1999, when the Commission provided expanded access to ASR database information. The Commission explained the benefits of this new system as follows:

A major benefit of the new system is that ASR filers and other interested parties will have free, interactive Internet access to the ASR database, and will be able to view both records of applications submitted to the Commission as well as granted Registration records. This feature will replace the current dial-up viewer access, in which users pay \$2.30 per minute via a 1-900 dial-up number to view records of ASR applications.³¹

As a result, tenant licensees and permittees (as well as any interested party) today can obtain a reference copy of the ASR – which contains the information found in the paper Form 854R, including the ASR Number and any tower lighting and/or painting specifications – directly via the internet through the FCC’s ASR Online Systems (<http://wireless.fcc.gov/antenna/>).

In light of these technological upgrades to the Commission’s online databases and ready availability of ASR data, the requirement to provide a paper copy of the Form 854R no longer serves any practical purpose. To the contrary, it imposes unnecessary costs on antenna structure

(footnote continued)

Registration from the owner in order to provide the Registration Number on each application submitted to the Bureau.”) (emphasis added).

³⁰ See *Part 17 R&O*, 11 FCC Rcd at 4294.

³¹ See *Public Notice*, “Commission Announces New Procedures for Antenna Structure Registration,” 14 FCC Rcd 9668, 9669-70 (1999) (emphasis added).

owners, who must generate and distribute paper copies of the Form 854R each time a change in ASR data is undertaken and a new 854R is issued, and on tenants, who waste time and incur expenses in dealing with the resulting paper copies. Armed with the ASR Number obtained from the owner, or the knowledge that an ASR has been modified, a tenant can obtain all the information it needs via the ASR Online Systems in order to verify current registration, complete service-specific applications, and determine any lighting and marking specifications.

Accordingly, PCIA recommends that the Commission modify Sections 17.4(e)-(f) and 17.6(c) of its rules to eliminate the requirement that owners provide tenants with paper copies of FCC Form 854R.³² Instead, the rules should indicate that owners need only provide the ASR Number (or some manner of notification that the ASR has been updated due to changes to lighting and marking specifications, or changes to coordinates, tower height or ground elevation for services for which these changes must be reported) to tenant permittees and licensees, who may then obtain relevant Form 854R information from the FCC's ASR Online Systems.³³

II. THE COMMISSION SHOULD CLARIFY PART 17 TO ENHANCE COMPLIANCE AND ALIGN RULES WITH FAA STANDARDS

The Commission should take this opportunity to clarify Part 17 rules that “are apt to confuse owners and licensees.”³⁴ Section 17.4(g) in particular has created confusion because of its vague language concerning where to post the ASR Number. The FCC also should harmonize a number of its Part 17 rules to bring them into alignment with FAA standards. Specifically, the

³² The Commission will also need to make a corresponding change to Section 1.61(a)(4) of its rules. *See* 47 C.F.R. § 1.61(a)(4).

³³ The Commission may also want to consider posting the official Form 854R online and advising owners via email of its posting to save agency mailing expenses.

³⁴ 2004 WTB Staff Report, 20 FCC Rcd at 160.

FCC should amend Section 17.23 to reflect the current FAA Advisory Circular governing obstruction marking and lighting, and amend Section 17.57 to require notification of construction or dismantlement consistent with FAA-prescribed timelines.

**A. Section 17.4(g) Requiring the Posting of ASR Numbers
Should Be Clarified to Expressly Permit Posting at the
Compound Fence or Gate**

Section 17.4(g) of the rules provides that the “Antenna Structure Registration Number must be displayed in a conspicuous place so that it is readily visible near the base of the antenna structure.”³⁵ This rule has been inconsistently applied due to tension between the requirement that the posting be “in a conspicuous place . . . that . . . is readily visible” but also “near the base.” While the Commission’s web site includes “Posting Guidelines” for a number of hypothetical situations, these guidelines do not appear in the rules and may create confusion.

In particular, a number of the guidelines indicate that an appropriate place to post the ASR Number is “along a perimeter fence” or “at the point of entry of the gate.”³⁶ Such points may be the most “readily visible,” but they may not be “near the base” of the antenna structure, creating confusion for owners seeking to comply with the rule. For example, one of PCIA’s members received Notice of Violation (“NOV”) for failure to post the ASR Number “near the base” of the antenna structure. The NOV was withdrawn once the FCC was shown that the ASR Number was clearly posted on the compound fence, but the incident points to the confusion that exists and the unnecessary expenditure of time and resources by the agency and industry that can result in the absence of a clear rule.

³⁵ 47 C.F.R. § 17.4(g).

³⁶ See <<http://wireless.fcc.gov/antenna/about/postingguidelines.html>>, visited July 28, 2006.

Accordingly, PCIA recommends that the rule be revised as set forth in Appendix A to make clear that posting the ASR Number at the compound fence or gate will satisfy the posting requirement. This will allow antenna structure owners to remain compliant with FCC regulations, thereby facilitating the effective identification of antenna structures. The FCC should also consider whether Section 17.4(g) might be amended to further include, either directly or as examples in notes following the text of the rule, additional language from the FCC's Posting Guidelines.³⁷

B. Section 17.23 Should be Amended to Reflect the Current FAA Advisory Circular Governing Obstruction Marking and Lighting

Section 17.23 of the rules sets forth the painting and lighting specifications for antenna structures. It provides that new or altered antenna structures, unless otherwise specified by the FCC, "must conform to the FAA's painting and lighting recommendations set forth on the structure's FAA determination of 'no hazard,' as referenced in the following FAA Advisory Circulars: AC 70/7460-1J, 'Obstruction Marking and Lighting,' effective January 1, 1996, and AC 150/5345-43E, 'Specification for Obstruction Lighting Equipment,' dated October 19, 1995." Since the rule was last revised, Advisory Circular AC 70/7460-1J has since been substantively revised and superseded by AC 70/7460-1K, effective August 1, 2000.

The Commission has made clear on more than one occasion that "if the FAA makes substantive amendments to either of these Advisory Circulars, it would initiate a public

³⁷ PCIA also recommends that in rooftop situations (another common type of antenna structure installation) where the rooftop is not available to the public, the rule, and at a minimum the guidelines, should be revised to provide that rather than posting the ASR Number on the roof, it may be maintained in the building office or made available to a requestor upon reasonable request.

proceeding prior to updating Part 17.”³⁸ The Commission should do so here and revise Section 17.23 to incorporate revised AC 70/7460-1K, effective August 1, 2000. In taking this necessary and important step to revise the rule to bring it into conformance with current FAA standards, the FCC should make clear, as it has done on prior occasions, that antenna structure owners which have previously been assigned painting and/or lighting specifications by the Commission are not required to update their structures in accordance with the revised Advisory Circular.³⁹ For the avoidance of any doubt, the FCC should incorporate into the text of the rule language posted on its web site specifying that, except where otherwise requested by the applicant, the lighting and marking specifications assigned to the structure by the FCC upon registration “will not change unless the FAA recommends new specifications for the structure due to an increase in overall height, a change in site coordinates, or an error in the originally submitted site data. This applies regardless of the information contained in past, present, or future versions of the FAA Advisory Circulars.”⁴⁰

³⁸ *Amendment of Part 87 of the Commission's Rules, Report and Order*, 14 FCC Rcd 3722, 3734 (1999); *see also Part 17 R&O*, 11 FCC Rcd at 4292 (“We also agree . . . that a notice and comment rule making proceeding should be initiated in order to incorporate future versions of the Advisory Circulars. As we stated in the *Notice*, if the FAA makes substantive amendments to either of the Advisory Circulars, the Commission must initiate a public proceeding prior to updating Part 17 of the Rules.”).

³⁹ *See, e.g., Amendment of Part 87 of the Commission's Rules*, 14 FCC Rcd at 3734; *Part 17 R&O*, 11 FCC Rcd at 4292; *see also* 47 C.F.R. § 17.17 (“No change in any of these criteria [referencing the requirements found in § 17.23 relating to painting and lighting of antenna structures] or relocation of airports shall at any time impose a new restriction upon any then existing or authorized antenna structure or structures.”).

⁴⁰ <<http://wireless.fcc.gov/antenna/documentation/paintingLighting.html>>, visited July 28, 2006.

**C. Section 17.57 Should Be Amended to Require
Notification of Construction or Dismantlement
Consistent with FAA Timelines**

Section 17.57 requires the owner of an antenna structure for which an ASR Number has been obtained to notify the Commission “within 24 hours of completion of construction . . . and/or dismantlement.”⁴¹ The FAA, however, requires notification “within 5 days after that construction or alteration reaches its greatest height.”⁴² The FCC’s rules should be revised to reflect the air safety expert agency’s judgment regarding notification intervals. Accordingly, PCIA recommends that Section 17.57 be harmonized with the FAA’s procedures to provide for notification within 5 days of completion or dismantlement. For internal consistency, and to avoid confusion, the related Section 17.57 requirement that a registrant notify the FCC “immediately” of any change in height or ownership should be revised to require notification within 5 days of the change. Harmonizing the FCC and FAA rules in this regard puts each regulatory agency on the same notification schedule.

⁴¹ 47 C.F.R. § 17.57.

⁴² 14 C.F.R. § 77.13(c); FAA Form 7460-2 (7-98), Item 3(A)(3), *available at* [<http://forms.faa.gov/>](http://forms.faa.gov/).

CONCLUSION

Updating the rules as proposed herein will advance the public interest by taking advantage of technological advances, clarifying the obligations of antenna structure owners and licensees, and harmonizing government requirements. Accordingly, consistent with the recommendation of the Bureau in the 2004 Biennial Review Proceeding, the FCC should promptly "institute a proceeding to examine the Part 17 rules to modify or eliminate" the rules described above, which in their current form "create unnecessary administrative burdens or are apt to confuse owners and licensees who attempt to comply with [the] Part 17 rules."⁴³

The foregoing is verified to be true and correct based upon information and belief.

Respectfully submitted,

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⁴³ See *WTB Staff Report*, 20 FCC Rcd at 137.

APPENDIX A

Proposed Rule Changes

§ 17.4 Antenna structure registration.

* * * * *

(e) If the owner of the antenna structure cannot file FCC Form 854 because it is subject to a denial of Federal benefits under the Anti-Drug Abuse Act of 1988, 21 U.S.C. 862, the first tenant licensee authorized to locate on the structure (excluding tenants that no longer occupy the structure) must register the structure using FCC Form 854, and provide a copy of the Antenna Structure Registration (FCC Form 854R) to the owner. The owner remains responsible for providing **the Antenna Structure Registration Number** ~~a copy of FCC Form 854R~~ to all tenant licensees on the structure and for posting the registration number as required by paragraph (g) of this section.

(f) The Commission shall issue, to the registrant, FCC Form 854R, Antenna Structure Registration, which assigns a unique Antenna Structure Registration Number. The structure owner shall immediately provide **the Antenna Structure Registration Number** ~~a copy of Form 854R~~ to each **new** tenant licensee and permittee, **and shall immediately advise (via fax, email or U.S. mail) each tenant licensee whenever the Form 854R is updated and reissued to reflect a change in lighting and marking specifications, or a change in site coordinates, ground elevation or structure height for services for which these changes must be reported. Licensees and permittees may obtain a reference copy of the Form 854R following its issuance or to check for any revision from the Commission's Antenna Structure Registration Online Systems website using the owner-provided Antenna Structure Registration Number.**

(g) Except as described in paragraph (h) of this section, the Antenna Structure Registration Number must be displayed in a conspicuous place so that it is readily visible **either (1) at a point of public access, such as on the compound gate or fence, or (2) near the base of the antenna structure.** Materials used to display the Antenna Structure Registration Number must be weather-resistant and of sufficient size to be easily seen at ~~the base of the antenna structure~~**where posted.**

* * * * *

§ 17.6 Responsibility of Commission licensees and permittees.

* * * * *

(c) If the owner of the antenna structure cannot file FCC Form 854 because it is subject to a denial of Federal benefits under the Anti-Drug Abuse Act of 1988, 21 U.S.C. 862, the first licensee authorized to locate on the structure must register the structure using FCC Form 854, and provide a copy of the Antenna Structure Registration (FCC Form 854R) to

the owner. The owner remains responsible for providing ~~a copy of FCC Form 854R~~ the Antenna Structure Registration Number to all new tenant licensees on the structure, as well as timely notice whenever the Form 854R is updated and reissued to reflect a change in lighting and marking specifications, site coordinates, ground elevation or structure height as required by §17.4(f), and for posting the registration number as required by §17.4(g). Licensees and permittees may obtain a reference copy of the Form 854R following its issuance or to check for any revision from the Commission's Antenna Structure Registration Online Systems website using the owner-provided Antenna Structure Registration Number.

§ 17.23 Specifications for painting and lighting antenna structures.

Unless otherwise specified by the Commission, each new or altered antenna structure to be registered on or after January 1, 1996, must conform to the FAA's painting and lighting recommendations set forth on the structure's FAA determination of "no hazard," as referenced in the following FAA Advisory Circulars: AC 70/7460-1JK, "Obstruction Marking and Lighting," effective ~~January 1, 1996~~ August 1, 2000, and AC 150/5345-43E, "Specification for Obstruction Lighting Equipment," dated October 19, 1995. These documents are incorporated by reference in accordance with 5 U.S.C. 552(a). The documents contain FAA recommendations for painting and lighting structures which pose a potential hazard to air navigation. For purposes of this part, the specifications, standards, and general requirements stated in these documents are mandatory. The specifications assigned to a structure by the FCC upon registration will not change unless the FAA recommends new specifications for the structure due to an increase in overall height, a change in site coordinates, or an error in the originally submitted site data. This applies regardless of the information contained in past, present, or future versions of the FAA Advisory Circulars. * * *

§ 17.47 Inspection of antenna structure lights and associated control equipment.

The owner of any antenna structure which is registered with the Commission and has been assigned lighting specifications referenced in this part:

* * * * *

(b) Shall inspect at intervals not to exceed 3 months all automatic or mechanical control devices, indicators, and alarm systems associated with the antenna structure lighting to insure that such apparatus is functioning properly, unless the owner has implemented automatic remote monitoring technology that allows for continuous, electronically supervised monitoring, via communications links monitored by daily polling, by centralized network operations control center(s) of all such control devices, indicators, and alarm systems.

§ 17.57 Report of radio transmitting antenna construction, alteration, and/or removal.

The owner of an antenna structure for which an Antenna Structure Registration Number has been obtained must notify the Commission within ~~5 days~~^{24 hours} of completion of construction (FCC Form 854-R) and/or dismantlement (FCC Form 854). The owner must also ~~immediately~~ notify the Commission using FCC Form 854 ~~upon~~^{within 5 days of} any change in structure height or change in ownership information.